

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

FILED

JUL 19 2021

AT _____ O'CLOCK

John M. Domurat, Clerk - Syracuse

CARLOS GARCIA

Plaintiff(s)

T. MCCARTHY, SUPERINTENDENT;

vs.

ANDERSON, C.O.; CARSON, C.O.;

FREDRICK, C.O.; JOHN DOE, C.O. #1;

JOHN DOE #2, C.O.; JOHN DOE #3, C.O.

Defendant(s)

INMATE

CIVIL RIGHTS

COMPLAINT PURSUANT

PURSUANT TO

42 U.S.C. § 1983

Case No. 9:21 CV 814

Plaintiff(s) demand(s) a trial by: ☒ JURY _____ COURT (Select only one).

Plaintiff(s) in the above-captioned action, allege(s) as follows:

JURISDICTION

1. This is a civil action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought pursuant to 42 U.S.C. § 1983. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343(3) and (4) and 2201.

PARTIES

2. Plaintiff: CARLOS GARCIA

Address: UPSTATE CORRECTIONAL FACILITY

P.O. BOX 2001

MALONE, N.Y. 12953

Additional Plaintiffs may be added on a separate sheet of paper.

3. a. Defendant: (UNKNOWN) ANDERSON

Official Position: CORRECTION OFFICER

Address: AUBURN CORRECTIONAL FACILITY

135 STATE ST.

AUBURN, N.Y. 13024

b. Defendant:

(UNKNOWN) CARSON

Official Position

CORRECTION OFFICER

Address:

AUBURN CORRECTIONAL FACILITY135 STATE STREETAUBURN, N.Y. 13024

c. Defendant:

(UNKNOWN) FREDRICK

Official Position:

CORRECTION OFFICER

Address:

AUBURN CORRECTIONAL FACILITY135 STATE STREETAUBURN, N.Y. 13024(-see ATTACH-)

Additional Defendants may be added separate sheet of paper.

4. PLACE OF PRESENT CONFINEMENT

a. Is there a prisoner grievance procedure at this facility?

☒ Yes☐ No

b. If your answer to 4a is YES, did you present the facts relating to your complaint in this grievance program?

☒ Yes☐ No

If your answer to 4b is YES,

(i) What steps did you take? I submitted a grievance
Three Times.(ii) What was the final result of your grievance? The grievances were
forwarded to the "Offices of Special Investigation" for processing,
stating "No further action is allowed at the facility level".

ATTACHED DEFENDANT LIST :

- D. Defendant: JOHN DOE #1
Official Position: CORRECTION OFFICER
Address: AUBURN CORRECTIONAL FACILITY
135 STATE STREET
AUBURN, N.Y. 13024
- E. Defendant: JOHN DOE #2
Official Position: CORRECTIONAL OFFICER
Address: AUBURN CORRECTIONAL FACILITY
135 STATE STREET
AUBURN N.Y. 13024
- F. Defendant: JOHN DOE #3
Official Position: CORRECTION OFFICER
Address: AUBURN CORRECTIONAL FACILITY
135 STATE STREET
AUBURN, N.Y. 13024
- G. Defendant: T. McCarthy
Official Position: Superintendent
Address: AUBURN CORRECTIONAL FACILITY
135 STATE STREET
AUBURN, N.Y. 13024

If your answer to 4b is NO-why did you choose to not present the facts relating to your complaint in the prison's grievance program? _____

- c. If there is no grievance procedure in your institution, did you complain to prison authorities about the facts alleged in your complaint?

☒ Yes ☐ No *I wrote despite submitting a facility grievance.*

If your answer to 4c is YES,

- (i) What steps did you take? *I wrote the Superintendent, Commissioner of DOCCS, Gov. Cuomo, ATTN. GENERAL, Office of Special Investigations, and an investigation was ordered by Commissioner and Gov. Cuomo.*
- (ii) What was the final result regarding your complaint? *The allegations were found to be SUBSTANTIATED by O.S.I..*

If your answer to 4c is NO- why did you choose to not complain about the facts relating to your complaint in such prison? _____

5. PREVIOUS LAWSUITS

- a. Have you ever filed any other lawsuits in any state and federal court relating to your imprisonment?

☒ Yes ☐ No

- b. If your answer to 5a is YES you must describe any and all lawsuits, currently pending or closed, in the space provided below.

For EACH lawsuit, provide the following information:

- i. Parties to previous lawsuit:

Plaintiff(s): CARLOS GARCIA

Defendant(s): THOMAS GRIFFIN ET AL.

ii. Court (if federal court, name District; if state court, name County):

Southern District of New York

iii. Docket number: 18-CV-8761 (KMK)

iv. Name of judge to whom case was assigned: Hon. Kenneth M. Karas

v. Disposition (dismissed? On appeal? Currently pending?): Currently pending

vi. Approximate date of filing prior lawsuit: 9/24/18

vii. Approximate date of disposition: Pending.

6.

FACTS

Set forth the facts of your case which substantiate your claim of violations of your civil and/or Constitutional rights. List the events in the order they happened, naming defendants involved, dates and places.

Note: You must include allegations of wrongful conduct as to EACH and EVERY defendant in your complaint. (You may use additional sheets as necessary).

(See ATTACH)

FACTS

On July 25, 2018, John Doe#1, refused to collect/pick-up my outgoing legal mail after noticing that it was going to a District Court, and thinking that I was filing a claim against officers in that facility, who were harassing me and interfering with my Inmate Liaison Committee duties. I insisted that my legal mail be picked up, or that I wanted to see the area supervisor. John Doe#1 refused and walked off, and I began to yell out my cell (12-28), stating that I wanted to speak to a Sergeant. At which time, other inmates also began to yell out also for a Sergeant to come to my cell. At approximately 10:30 p.m., C.O. Anderson, C.O. Carson and C.O. Fredrick came to my cell, with C.O. Fredrick carrying a silver fire extinguisher. I again insisted that my legal mail be picked-up, when unprovoked, Officer Fredrick suddenly sprayed me with the fire extinguisher across my face and chest, and began spraying my legal mail containing my §1983 Complaint to the Southern District and all my exhibits that in total was about three hundred (300) pages of documents. As well as my cell until the extinguisher was empty, without no argument or provocation whatsoever. Thereafter, the three officers walked off laughing and exited the gallery, where they shut off the gallery lights and cell block lights. I was trying to save my documents, when my electrical power was suddenly shut off from behind my cell leaving me in complete darkness. At that moment, I heard them behind my cell in the catwalk, and went to the back of my cell to hear what they were up to back there, when I heard several poofing sounds that I initially thought was pepper spray that they were spraying into my air vent. My eyes, nose and throat immediately began to burn,

and I could not breathe, my chest felt tight and began to feel light headed. I was in the dark, so I did not realize at that moment, that I was completely engulfed in a fog of chemical Agents. I was having extreme difficulty breathing, and afraid to fall asleep not sure if they would attack my cell again. When the midnight shift came on, and was making his round, I immediately asked John Doe#2 for emergency medical. I told him I could not breathe, had chest pain and that my eyes, nose and throat was burning. John Doe#2 completely ignored me and kept walking, and an hour later - on his next round - I again informed John Doe#2, that I need to see medical and again was ignored. So I knew they told him not to let me see anyone, because at approx 1:00 a.m., I asked his partner "John Doe#3" for emergency medical during his rounds and he also ignored me. At about 2:00 A.m. I reiterated my request for medical, and John Doe#3 told me that, "he spoke to the nurse, that he called her". And she said, "She is not coming to the block, but that she will try to see me in the morning". That was totally false, because nobody came to see me in the morning.

At about 2:45 p.m. on July 26, 2018, the Superintendent and Dep. of Security came to my cell, and I explained everything to them. I showed them my cell covered in dust particles from the substance sprayed into my cell, that at that point realized that it was the Multi-purpose Red fire extinguisher that contains hazardous chemical Agents that is dangerous to inhale. Because it contains Ammonium Phosphate and/or Ammonium Sulfate Powder. I demonstrated that I had no light from being shut

(2)

off prior to the spraying of my cell, which clearly shows that their actions were a premeditated malicious and sadistic act, that do not conform with the color of State Law, served no penological interest or was done in good faith to restore order or discipline. There was absolutely no threat posed to them, there was not even an argument, just a request to have my mail picked-up.

I was not seen by medical until July 27, 2018, because I was deliberately denied medical attention by John Doe #2 and John Doe #3, who were clearly indifferent to my medical need.

I was never provided the appropriate equipment to decontaminate the cell despite requesting it, or have it cleaned. I was left in that condition for 13 days, that upon attempting to clean off my property, both my eyes were infected to the point that they were completely blood-shot red and leaking green puss. That they had to send me to emergency medical on August 7, 2018 when the counselor seen my eyes and wrote a report on it because he did not want to be blamed for the nurse who was refusing to see me. It was as if the administration was attempting to keep it quiet, because not even mental health would respond when I wrote about my anxiety disorder being out of control and depression. I was writing everyone about my situation, because my lungs felt like they were on fire. The Superintendent should have acted promptly to remove me from that cell, or have a clean up crew decontaminate it of that substance. The office of special investigation conducted an investigation, and substantiated my

allegations and forwarded their investigation reports to Human Resources, who assigned the case to the Special Counsel for Labor Relations to pursue expulsion hearings in front of an arbitrator, and they were terminated and/or suspended for a period.

Thereby, conceding that misconduct did in fact occur in this situation.

Carlos Marcia
Plaintiff PRO-se

Dated July 15, 2018

7.

CAUSES OF ACTION

Note: You must clearly state each cause of action you assert in this lawsuit.

FIRST CAUSE OF ACTION

Violation of First Amendment of the United States Constitution, Denial access to the Court by John Doe #1 for refusal to pick up legal mail, and Anderson, Carson and Fredrick, who refused to pick up mail and Fredrick destroying documents.

SECOND CAUSE OF ACTION

Violation of 8th Amendment of the United States Constitution, Right to be free of excessive force with chemical Agents, cruel and unusual punishment that unjustifiably inflicts pain or injury, and deliberate indifference to medical need.

THIRD CAUSE OF ACTION

~~Violations of 14th Amendment of the United States Constitution, Right to be free of excessive force with chemical Agents, cruel and unusual punishment that unjustifiably inflicts pain or injury, and deliberate indifference to medical need.~~

8. PRAYER FOR RELIEF

WHEREFORE, plaintiff(s) request(s) that this Court grant the following relief:

WHEREFORE, Plaintiff request that the court grant the following relief, Compensatory damages in the amount of \$500,000 and further relief as the Court deems Just and Proper.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: July 15, 2021

Carlos Garcia Prose
Carlos Garcia Prose

Signature of Plaintiff(s)

(All Plaintiffs must sign)